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"It is time for Congress to examine and decide for itself. It has taken things on trust long enough."—*Daniel Webster.*

Webster, Daniel
1
Daniel Webster
on
The Draft

Text of a Speech delivered in Congress
December 9, 1814

Reprinted from "The Letters of Daniel Webster,"
edited by C. H. Van Tyne

Contrary to the impression given by the majority report from the Senate Committee on Military Affairs, the United States did not enact "drastic draft laws" during the War of 1812.

The State of New York did enact such a measure but her move was generally regarded as an attempt to stampede Congress into the passage of a conscription act.

In spite of the fact that the bill was strongly urged by the President and the Secretary of War, it was defeated on the ground that it was unconstitutional. This argument of Webster's, coming from the ablest constitutional lawyer in Congress, contributed materially to its defeat.

AMERICAN UNION AGAINST MILITARISM

Munsey Building

Washington, D. C.

"Where is it written in the Constitution . . . that you may take children from their parents . . . and compel them to fight the battles of any war which the folly or the wickedness of government may engage in?"—*Daniel Webster.*

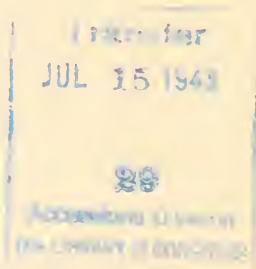
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Speech of Daniel Webster

[The House had under consideration a bill proposing to draft men for service in the War of 1812.]

MR. WEBSTER. Mr. Chairman: After the best reflection which I have been able to bestow on the subject of the bill before you, I am of the opinion that its principles are not warranted by any provision of the constitution. It appears to me to partake of the nature of those other propositions for military measures, which this session, so fertile in invention, has produced. It is of the same class with the plan of the Secretary of War; with the bill reported to this House by its own committee, for filling the ranks of the Regular Army by classifying the male population of the United States; with the resolution recently introduced by an honorable gentleman from Pennsylvania, Mr. Ingersoll, and which now lies on your table, carrying the principle of compulsory service in the Regular Army to its utmost extent.

I

This bill, indeed, is less undisguised in its object, and less direct in its means, than some of the measures proposed. It is an attempt to exercise the power of forcing the free men of this country into the ranks of the Army, for the general purposes of the war, under color of a military service. To this end it commences with a classification, which is no way connected with the general organization of the Militia, nor, to my apprehension, included within any of the powers which Congress possesses over them. All the authority which this government has over the Militia, until actually called into the service, is to enact laws for their organization and discipline. This power it has exercised. It now possesses the further power of calling into its service any portion of the Militia of the States, in the particular exigencies for which the constitution provides, and of governing them during the continuance of such service. Here its authority ceases. The classification of the whole body of the Militia, according to the provisions of this bill, is not a measure which respects either their general organization or their discipline. It is a distinct system introduced for new purposes, and not connected with any power which the Constitution has conferred on Congress.

But, Sir, there is another consideration. **The services of the men to be raised under this act are not limited to those**

cases in which alone this government is entitled to the aid of the militia¹ of the States. These cases are particularly stated in the Constitution—"to repel invasion, suppress insurrection, or execute the laws." But this bill has no limitation in this respect. The usual mode of legislating on the subject is abandoned. The only section which would have confined the services of the Militia proposed to be raised, within the United States, has been stricken out and if the President should not march them into the Provinces of England at the North, or of Spain at the South, it will not be because he is prohibited by any provision in this Act.

This, then, Sir, is a bill for calling out the Militia not according to its existing organization, but by draft from new created classes—not merely for the purpose of repelling invasion, suppressing insurrection, or executing the laws, but for the general objects of war—for defending ourselves, or invading others as may be thought expedient, not for a sudden emergency, or for a short time, but for long stated periods; for two years, if the proposition of the Senate should finally prevail; for one year if the amendment of the House should be adopted. What is this Sir, but raising a standing army out of the Militia by draft, and to be recruited by draft, in like manner, as often as occasions require?

This bill, then, is not different in principle from the other bills, plans, and resolutions which I have mentioned. The present discussion is properly and necessarily common to them all. It is a discussion, Sir, of the last importance. That measures of this nature should be debated at all, in the councils of a free government, is a cause of dismay. The question is nothing less than whether the most essential rights of personal liberty shall be surrendered, and despotism embraced in its worst form.

II

I have risen, on this occasion, with anxious and painful emotions, to add my admonitions to what has been said by others. Admonition and remonstrance, I am aware, are not acceptable strains. They are duties of unpleasant performance. But they are, in my judgment, the duties which the condition of a falling state imposes. They are duties which sink deep in his conscience, who believes it probable that they may be the last services which

¹ "Militia" as used in the Constitution refers to the entire male population of the several States, capable of bearing arms—the age limits varying in different States. The National Guard, strictly speaking, is not the militia, but simply the organized militia.

he may be able to render to the government of his country. On the issue of this discussion, I believe the fate of this government may rest. Its duration is incompatible, in my opinion, with the existence of the measures in contemplation. A crisis has at last arrived, to which the course of things has long tended, and which may be decisive upon the happiness of present and future generations. If there be anything important in the concerns of men, the considerations which fill the present hour are important. I am anxious above all things, to stand acquitted before God, and my conscience, and in the public judgments, of all participation in the Counsels, which have brought us to our present condition and which now threaten the dissolution of the government. When the present generation of men shall be swept away and that this government ever existed shall be a matter of history only, I desire that it may then be known that you have not proceeded in your course unadmonished and unforwarned. Let it then be known that there were those, who would have stopped you, in the career of your measures, and held you back, as by the skirts of your garments, from the precipice, over which you are plunging, and drawing after the government of your Country. . . .

It is time for Congress to examine and decide for itself. It has taken things on trust long enough. It has followed executive recommendation till there remains no hope of finding safety in that path. What is there, Sir, that makes it the duty of this people now to grant new confidence to the administration, and to surrender their most important rights to its discretion? On what merits of its own does it rest this extraordinary claim? . . .

Let us examine the nature and extent of the power which is assumed by the various military measures before us. In the present want of men and money, the Secretary of War has proposed to Congress a Military Conscription. For the conquest of Canada the people will not enlist, and if they would the treasury is exhausted and they could not be paid. Conscription is chosen as the most promising instrument, both of overcoming the reluctance to the Service, and of subduing the difficulties which arise from the deficiencies of the exchequer. The administration asserts the right to fill the ranks of the Regular Army by compulsion. It contends that it may now take one out of every twenty-five men, and any part or whole of the rest, whenever its occasions require. Persons thus taken by force and put into an army may be compelled to serve there, during the war, or for life. They may be put on any service, at home or abroad, for defense or for invasion, according to the will and pleasure of the government. This power

does not grow out of any invasion of the country, or even out of a state of war. It belongs to government at all times, in peace as well as war, and is to be exercised under all circumstances according to its mere discretion. This, Sir, is the amount of principle contended for by the Secretary of War.

Is this, Sir, consistent with the character of a free government? Is this civil liberty? Is this the real character of our constitution? No, Sir, indeed it is not. The Constitution is libelled, foully libelled. The people of this country have not established for themselves such a fabric of despotism. They have not purchased at a vast expense of their own treasures and their own blood a Magna Charta to be slaves. Where is it written in the Constitution, in what article or section is it contained that you may take children from their parents and parents from their children and compel them to fight the battles of any war which the folly or the wickedness of government may engage in? Under what concealment has this power lain hidden which now for the first time comes forth, with a tremendous and baleful aspect, to trample down and destroy the dearest rights of personal liberty? Who will show me any constitutional injunction which makes it the duty of the American people to surrender everything valuable in life, and even life itself, not when the safety of their country and its liberties may demand the sacrifice, but whenever the purposes of an ambitious and mischievous government may require it? Sir, I almost disdain to go to quotations and references to prove that such an adominable doctrine has no foundation in the Constitution of the country. It is enough to know that that instrument was intended as the basis of a free government and that the power contended for is incompatible with any notion of personal liberty. An attempt to maintain this doctrine upon the provisions of the Constitution is an exercise of perverse ingenuity to extract slavery from the substance of a free government. It is an attempt to show, by proof and argument, that we ourselves are subjects of despotism and that we have a right to chains and bondage, firmly secured to us and our children by the provisions of our government. It has been the labor of other men at other times, to mitigate and reform the powers of government by construction; to support the rights of personal security by every species of favorable and benign interpretation, and thus to infuse a free spirit into governments not friendly in their general structure and formation to public liberty.

The supporters of the measures before us act on the opposite principle. It is their task to raise arbitrary powers, by construc-

tion, out of a plain written charter of National Liberty. **It is their pleasing duty to free us of the delusion, which we have fondly cherished, that we are the subjects of a mild, free, and limited government, and to demonstrate by a regular chain of premises and conclusions, that government possesses over us a power more tyrannical, more arbitrary, more dangerous, more allied to blood and murder, more full of every form of mischief, more productive of every sort of misery, than has been exercised by any civilized government, with one exception, in modern times.**

III

The Secretary of War has favored us with an argument on the constitutionality of this power. Those who lament that such doctrines should be supported by the opinion of a high officer of government, may a little abate their regret, when they remember that the same officer, in his last letter of instructions to our ministers abroad, maintained the contrary. **In that letter he declares that even the impressment of seamen, for which many more plausible reasons may be given than for the impressment of soldiers, is repugnant to our constitution.**

It might, therefore, be sufficient answer to his argument, in the present case, to quote against it the sentiments of its own author, and to place the two opinions before the House, in a state of irreconcilable conflict. Further comment on either might then be properly forborne, until he should be pleased to inform us which he retracted and to which he adhered. But the importance of the subject may justify a further consideration of the argument.

Congress having, by the Constitution, a power to raise armies, the Secretary contends that no restraint is to be imposed on the exercise of this power, except such as is expressly stated in the written letter of the instrument. In other words, that Congress may execute its powers by any means it chooses, unless such means are particularly prohibited. But the general nature and object of the Constitution impose as rigid restriction on the means of exercising power as could be done by the most explicit injunctions. It is the first principle applicable to such a case that no construction shall be admitted which impairs the general nature and character of the instrument. A free Constitution of government is to be construed upon free principles, and every branch of its provisions is to receive such an interpretation as is full of its general spirit. No means are to be taken by implication, which

would strike us absurdly if expressed. **And what would have been more absurd, than for this constitution to have said, that to secure the great blessings of liberty it gave to government an uncontrolled power of military conscription?** Yet such is the absurdity which it is made to exhibit under the commentary of the Secretary of War.

IV

But it is said that it might happen that an army would not be raised by voluntary enlistment, in which case the power to raise an army would be granted in vain, unless they might be raised by compulsion. If this reasoning could prove anything it would equally show that whenever the legitimate powers of the Constitution should be so badly administered as to cease to answer the great ends intended by them, such new powers may be assumed or usurped, as any existing administration may deem expedient. This is a result of his own reasoning to which the Secretary does not profess to go. But it is a true result. For if it is to be assumed that all powers were granted, which might by possibility become necessary, and that government itself is the judge of this possible necessity, then the powers of the government are precisely what it chooses they should be. Apply the same reasoning to any other power granted to Congress and test its accuracy by its result. Congress has power to borrow money. How is it to exercise this power? Is it confined to voluntary loans? There is no express limitation to that effect, and in the language of the Secretary it might happen, indeed, it has happened, that persons could not be found willing to lend. Money might be borrowed then in any other mode. In other words, Congress might resort to a forced loan. It might take the money of any man by force and give in exchange Exchequer notes or Certificates of Stock. Would this be quite constitutional, Sir? It is entirely within the reasoning of the Secretary, and it is the result of his argument, outraging the rights of individuals in a far less degree than the practical consequences which he himself draws from it. **A compulsory loan is not to be compared, in point of enormity, with a compulsory military service.**

If the Secretary of War has proved the right of Congress to enact a law enforcing a draft of men out of the Militia into the Regular Army, he will at any time be able to prove quite as clearly that Congress has power to create a Dictator. The arguments which have helped him in one case will equally help him in the other. The same reason of a supposed or possible state

necessity which is urged now, may be repeated then with equal pertinency and effect.

- Sir, in granting Congress the power to raise armies, the People have granted all the means which are ordinary and usual, and which are consistent with the liberties and security of the People themselves and they have granted no others. To talk about the unlimited power of the government over the means to execute its authority is to hold a language which is true only in regard to despotisms. The tyranny of Arbitrary Government consists as much in its means as in its ends, and it would be a ridiculous and absurd constitution which should be less cautious to grant against abuses in the one case than in the other. All the means and instruments which a free government exercises, as well as the ends and objects it pursues, are to partake of its own essential character, and to be conformed to its genuine spirit. **A free government with arbitrary means to administer it is a contradiction, a free government without adequate provisions for personal security is an absurdity, a free government with an uncontrolled power of military conscription is a solecism, at once the most ridiculous and abominable that ever entered into the head of man.**

V

Sir, I invite the supporters of the measures before you to look to their actual operations. Let the men who have so often pledged their own fortunes and their own lives to the support of this war, look to the wanton sacrifice which they are about to make of their lives and fortunes. They may talk as they will about substitutes and compensation, and exemptions. It must come to the draft at last. If the Government cannot hire men to voluntarily fight its battles neither can individuals. If the war should continue, there will be no escape, and every man's fate and every man's life will come to depend on the issue of the military draft. Who shall describe to you the horror which your orders of Conscription shall create in the once happy villages of this country? Who shall describe the anguish and distress which they will spread over those hills and valleys, where men have, heretofore, been accustomed to labor and to rest in security and happiness. **Anticipate the scene, Sir, when the class shall assemble to stand its draft and to throw the dice for blood.** What a group of wives and mothers and sisters, of helpless age and helpless infancy, shall gather round the theatre of this horrible lottery, as if the strokes of death were to fall from

heaven before their eyes, on a father, a brother, a son, or a husband. And in the majority of cases, Sir, it will be the stroke of death. Under present prospects of a continuance of the war, not one half of them on whom your conscription shall fall, will ever return to tell the tale of their sufferings. They will perish of disease and pestilence, or they will leave their bones to whiten in fields beyond the frontier. Does the lot fall on the father of a family? His children, already orphans, shall see his face no more. When they behold him for the last time they shall see him lashed and fettered, and dragged away from his own threshold, like a felon and an outlaw. Does it fall on a son, the hope and staff of aged parents? That hope shall fail them. On that staff they shall lean no longer. They shall not enjoy the happiness of dying before their children. They shall totter to their graves, bereft of their offspring, and unwept by any who inherit their blood. Does it fall on a husband? The eyes which watch his parting steps may swim in tears forever. She is a wife no longer. There is no relation so tender or so sacred, that, by these accursed measures, you do not propose to violate it. Into the paradise of domestic life you enter, not indeed by temptations and sorceries, but by open force and violence. * * *

Nor is it, Sir, for the defense of his own house and home that he who is subject to military draft is to perform the task allotted to him. * * *

VI

I would ask, Sir, whether the supporters of these measures have well weighed the difficulties of their undertaking. Have they considered whether it will be found easy to execute laws which bear such marks of despotism on their front, and which will be so productive of every sort and degree of misery in their execution. For one, Sir, I hesitate not to say that they cannot be executed. No law professedly passed for the purpose of compelling a service in the Regular Army, not any law, which under color of military draft shall compel men to serve in the Army, not for the emergencies mentioned in the constitution, but for long periods and for the general objects of war, can be carried into effect. The operation of measures thus unconstitutional and illegal ought to be prevented by a resort to other measures which are both constitutional and legal. **It will be the solemn duty of the State Governments to protect their own authority over their own Militia, and to interpose between their citizens and arbitrary power. These are among the objects for which the State Governments exist, and their highest obligations**

bind¹ them to the preservation of their own rights and the liberties of their people. I express the sentiments here, Sir, because I shall express them to my constituent. Both they and myself live under a constitution which teaches us that "the doctrine of non-resistance against arbitrary power and oppression is absurd, slavish, and destructive of the good and happiness of mankind."² With the same earnestness with which I now exhort you to forbear from these measures, I shall exhort them to exercise their unquestionable right of providing for the security of their liberties.

In my opinion, Sir, the sentiments of the free population of this country are greatly mistaken here. The nation is not yet in a temper to submit to conscription. The people have too fresh and strong a feeling of the blessings of civil liberty to be willing thus to surrender it. You may talk to them as much as you please of the victory and glory to be obtained in the enemy's provinces, they will hold those objects in light estimation, if the means be a forced military service. You may sing to them the song of Canada conquests in all its variety, but they will not be charmed out of the remembrance of their substantial interests and true happiness. Similar pretenses, they know, are the graves in which the liberties of other nations have been buried and they will take warning.

Laws, Sir, of this nature can create nothing but opposition. If you scatter them abroad like the fabled serpents teeth, they will spring up into armed men. A military force cannot be raised, in this manner, but by the means of a military force. If the administration has found that it cannot form an army without conscription, it will find, if it venture on these experiments, that it cannot enforce conscription without an army. The Government was not constituted for such purposes. Framed in the spirit of liberty and in the love of peace, it has no powers which render it able to enforce such laws. The attempt, if we rashly make it, will fail and having already thrown away our peace, we may thereby throw away our government.

² New Hampshire Bill of Rights.



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